



***Montana Fish,
Wildlife & Parks***

DRAFT ENVIRONMENTAL ASSESSMENT
COMMERCIAL USE MANAGEMENT PLAN
FOR
WILDLIFE MANAGEMENT AREAS

June 2008

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Comments due no later than July 14, 2008.

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1. PURPOSE AND NEED FOR ACTION

1.1. Background

Throughout the decades, Montana Fish, Wildlife & Parks (FWP) has worked to preserve key wildlife habitats, especially those important to game species such as mule and white-tailed deer, elk, and antelope. Currently, FWP owns and manages 75 wildlife management areas (WMAs) encompassing over 333,000 acres. The WMAs encompass a variety of ecosystems from montane forests to plains grasslands. See *Appendix A* for a list of WMAs.

In addition to providing habitat for wildlife, WMAs offer recreational opportunities for the public in the form of hunting, hiking, horseback riding, and wildlife viewing. Recognizing the potential growing pressure these sensitive areas are enduring from commercial interests, the FWP Commission tasked the agency to develop a set of policies that would clarify how commercial activities could continue to occur on WMAs.

In 2006, the FWP Commission adopted administrative rules that now oversee commercial use¹ that occurs on FWP land, including WMAs. The rules identify the types of commercial activities allowed and prohibited on FWP-owned properties, the permits required to conduct commercial use, the permit application processes, and the allocation of permits.

In conjunction with developing the administrative rules, FWP conducted an environmental assessment (EA) that examined commercial use on FWP land, including WMAs. That EA examined the issue of whether or not to authorize commercial use at WMAs. After reviewing public comments both for and against allowing commercial use at WMAs, the FWP Commission adopted rules stating that FWP may authorize commercial uses at a WMA to ensure WMAs would be managed carefully since they are unique places with a special wildlife habitat purposes. Because their focus is on wildlife habitat, the rules prohibit commercial hunting and fishing activities on all WMAs. Additionally, the rules require FWP to prepare a commercial use plan before authorizing commercial use at a WMA, and that the plan identify the types of commercial use that may be authorized at the site; the terms, conditions and volume of commercial use that may be authorized; and the methods for allocating commercial use permits.

¹ Commercial use, as defined in the administrative rule 12.14.101, means any person or entity that utilizes land under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration. Commercial use includes any person, group, or organization, that makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on land that is under the control, administration, and jurisdiction of the department. This includes nonprofit organizations and educational groups that receive money from participants in activities occurring on department land. This includes a person whose business operates on department land, regardless of that person's physical presence at the site, but does not include a person who rents, sells, or otherwise provides equipment or merchandise that is used on department land unless the renting, selling, or providing of equipment or merchandise takes place on department land. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination thereof.

Rather than developing an individual plan for each WMA, FWP determined that it would be more efficient and beneficial to develop an overarching statewide commercial use management plan for all WMAs and implementation plans for those sites where FWP anticipates authorizing commercial use. This approach is intended to produce a consistent evaluation and decision-making process that can be used by the various FWP administrative regions.

1.2. Proposed Action

This EA assesses the proposed implementation of the Commercial Use Management Plan for WMAs. The proposed plan identifies the types of commercial activities that may be authorized at a WMA; the permit terms, conditions, and volume of commercial use that may be authorized; and the methods for allocating commercial use permits on WMAs. See *Appendix B* for a copy of the proposed Commercial Use Management Plan.

1.3. Purpose and Need for Proposed Action

The purpose for the management plan is to provide overarching guidance to FWP staff for *evaluating requests* to conduct commercial use on a wildlife management area and *administering commercial use permits*. This plan would ensure the process and terms for permitting commercial activities on WMAs is consistent through the seven FWP regions and the allocation methods for the number of permits issued per activity is in line with the management objectives of the individual WMA.

The FWP Commercial Use Rules (ARM 12.14.150(2)) require the development of a commercial use management plan prior to authorizing commercial use at a wildlife management area. The rules state that the plan shall identify:

- 1) the types of commercial use that may be authorized at the WMA;
- 2) the terms, conditions, and volume of commercial use that may be authorized; and
- 3) the methods for allocating commercial use permits.

1.4. Objectives of Proposed Action

1. Provide clear direction on the type, timing, duration, and amount of commercial use that may be authorized at a WMA.
2. Establish a consistent statewide permit application process and fees.

1.5. Decision to be Made

Whether FWP will decide to adopt a final Commercial Use Plan for commercial activities on WMAs.

1.6. Agency Authority

Under Montana Code Annotated 87-1-301, the commission shall set policies to protect and preserve fish and wildlife, shall establish fishing and hunting regulations, and shall establish rules governing the use of department-owned or controlled lands.

The Commercial Use rules for FWP under 12.14.101-170 of the Administrative Rules of Montana define the applicability and general policy for FWP to control commercial activities on FWP-owned or leased properties. Commercial Use Rules are included as Appendix A within the draft Commercial Use Management Plan.

FWP's 2006 Commercial Use Permit Fee Rule identifies the permit fee structure.

2. ALTERNATIVES

2.1 Alternative A: No Action

Under Alternative A, FWP would not adopt the proposed commercial use plan. Commercial use could not be authorized on FWP's wildlife management areas. All commercial activities would be prohibited until a management plan was approved and implemented. FWP would develop a new proposal for authorizing commercial use at WMAs.

2.2 Alternative B: Approve the Proposed Commercial Use Management Plan (Preferred Alternative)

Under Alternative B, FWP would adopt and implement the proposed commercial use plan. The statewide plan would ensure the consistent execution of the Commercial Use administrative rules, the Commercial Use Permit Fee Rule and the administration of the permitting process for commercial activities on WMAs.

3. AFFECTED ENVIRONMENT

FWP owns or leases approximately 330,000 acres for wildlife management areas (75 WMAs) around the state. The purpose and function of WMAs are to conserve and manage wildlife habitat for the benefit of wildlife species and for the enjoyment of the general public.

WMAs are gems scattered across the landscape, highly prized, used, and protected by the people of the state. These properties are examples of the diversity of Montana's landscape, from wetlands to rivers to mountains and prairies. There are 449 bird, terrestrial, and aquatic species known to use the WMAs based upon observations logged with the Montana Natural Heritage Program. The following chart summarizes the types of species represented and the number of those considered Species of Concern in Montana or listed as Threatened or Endangered by the U.S. Fish and Wildlife Service. Also noted is the number of Tier 1 species identified in FWP's Comprehensive Fish and Wildlife Conservation Strategy, which categorized each species based

on population status (declining, increasing), threat to critical habitat, and other species requirements.

Type	Number of Species	Species of Concern	Threatened or Endangered	Tier 1 Species
Amphibians	12	4		2
Birds	303	49	4	16
Fish	40	8	1	7
Mammals	83	12	3	8
Reptiles	11	4		2
Total:	449	77	8	35

Most WMAs have a few established routes through them to provide access to adjacent public property often owned by the Bureau of Land Management or Forest Service. A few WMAs have no roads to provide access to their interiors.

The majority of the public using wildlife management areas do so without commercial services. In part this may be due to the availability of maintained motorized travel routes through the WMAs, interpretive signing, brochures, site-dedicated personnel, and the absence of commercial providers servicing a specific WMA.

Current Administration of Commercial Use at Wildlife Management Areas

Historically FWP has only received a small number of requests to conduct commercial use at WMAs. Most of these requests were denied due to prior interpretation of federal aid requirements, Wildlife Division policy, or concerns about impacts on resources or conflicts with other users. Authorized requests occurred primarily in administrative regions 2 and 4. Examples include guided wildlife viewing and horseback riding. Some of the authorized use was by non-profit organizations whose activities would now be considered commercial use under the administrative rules. When authorizing commercial use in the past FWP has not issued formal permits. Instead, FWP granted permission via a letter from the director or the regional program manager verbally approved the activity. Periodic monitoring of commercial use is the responsibility of local/field staff.

Some unauthorized commercial use has occurred on WMAs in the past. Examples include commercial photography, guided tours or guided fishing trips conducted without prior communication and approval by FWP. The department has not authorized commercial hunting outfitting on any FWP land and some sites have deed language that prohibits hunting outfitting, (e.g. the Beartooth Game Range).

4. EVALUATION OF IMPACTS ON THE PHYSICAL ENVIRONMENT

4.1 Land Resources

Impacts for the Proposed Action: FWP predicts that no direct impacts would occur as a result of FWP approving the implementation of the Commercial Use

Management Plan. The potential for minor indirect impacts does exist because permits can be authorized for trail rides and vehicle-based tours that might disturb soils near established trails and roads. Although such activities would primarily be limited to established travel routes, there is the possibility that some permittees could take motorized vehicles elsewhere, which could displace soils, disturb geological features, and establish new erosion patterns. Permit stipulations would prohibit travel off of roads and trails and violations could result in citations and/or loss of authorization.

Impacts for the No Action: Commercial use would not be authorized at WMAs and therefore FWP predicts that there would be minimal impacts on land resources. Impacts would be only associated with unauthorized commercial use.

4.2 Air Resources

Impacts for the Proposed Action: FWP predicts that no direct impacts would occur as a result of FWP approving the implementation of the Commercial Use Management Plan. Indirect impacts from the approval of the management plan could include an increase in use of authorized motorized vehicles for trail rides and eco-tours within WMAs. Those vehicles would likely generate a limited amount of nuisance odors and pollutants in a localized area where the vehicle is traveling. These influences would likely occur only for a short time period and on a limited basis depending upon the number of permits allocated in a specific WMA.

Impacts for the No Action: The normal air quality would remain the same if the implementation of the management plan were postponed.

4.3 Water Resources

Impacts for the Proposed Action: Since the approval of the plan is an administrative action, FWP does not predict any direct impacts on water resources within WMAs. Since none of the proposed authorized commercial activities are anticipated to affect any lakes, streams or rivers that are within the boundaries of a WMA, no indirect impacts are expected by the authorization of commercial permits under the guidance of the Commercial Use Management plan.

Impacts for the No Action: No changes to the existing water resources within FWP's WMAs would occur if the implementation of the management plan was postponed.

4.4 Vegetation Resources

Impacts for the Proposed Action: FWP predicts no direct impacts on vegetation resources. As for indirect affects to this resource, there is the potential that some permitted commercial activities would disturb small amounts of local vegetation

by those visiting the site. The overall diversity of plants within the WMAs would not be decreased, thus providing a healthy environment for the terrestrial and aquatic species. Additionally, although each FWP region has a noxious weed management plan and puts it into practice at their WMAs, increased human presence and activities within WMAs could spread weeds into new areas.

Only limited number of surveys have taken place within WMAs, thus it is difficult to hypothesize if commercial activities would have any impact to sensitive vegetative species.

Impacts for the No Action: The status quo would be maintained and FWP would continue to implement the regional weed management plans to decrease the spread of noxious weeds within each WMA and maintain boundary fencing to exclude cattle from fragile wildlife forage areas.

4.5 Wildlife Resources

Impacts for the Proposed Action: Since the approval of the management plan is an administrative action, FWP does not predict any direct impacts on wildlife resources. However with the possibility of an increase in vehicular, horse, and foot traffic and depending upon the level of that traffic, stress to indigenous wildlife may increase. FWP does not predict any enduring negative affects but wildlife may be temporarily displaced from areas where commercial activities occur.

Impacts for the No Action: If the management plan was not approved no changes to current wildlife behavior or stress levels would occur.

5. EVALUATION OF IMPACTS ON THE HUMAN ENVIRONMENT

5.1 Noise/Electrical Effects

Impacts for the Proposed Action: FWP does not predict direct impacts on the noise or electrical environment. There could be a temporary increase in the noise levels in the immediate area of commercial activities.

Impacts for the No Action: There would be no impact to current noise levels.

5.2 Land Use

Impact of Proposed Action and No Action Alternative: FWP does not predict an impact on the productivity of the public lands, nor conflicts with existing land uses at the WMAs. Most WMAs were acquired for the purpose of conserving critical wildlife habitat, which would remain the focus of those sites.

5.3 Risk/Health Hazards

Impacts for the Proposed Action: FWP does not predict any direct impacts on public risk or health because most of the authorized activities would occur on developed trails or roads. For filming and photography activities, the issuance of permits could tempt some permittees to conduct use in unfamiliar environments and this may lead to the increase of some risks.

Impacts for the No Action: No new public safety issues would be established.

5.4 Community Impacts

Impacts for the Proposed Action: FWP does not predict any direct impacts on communities located close to WMAs. Authorization of commercial use may be lead to an increase in recreational-based businesses in nearby communities. FWP does not anticipate any traffic issues within or near WMAs caused by commercial activities since permits for a given activity would be limited and the volume of commercial activities would be monitored.

Impacts for the No Action: No impacts would occur to communities near WMAs if the approval of the management plan were postponed.

5.5 Public Services/Taxes/Utilities

Impact of Proposed Action: FWP does not predict any impact on local or state tax bases or revenues, and no alterations of existing utility systems nor tax bases of revenues, nor increased uses of energy sources.

No Action Alternative: No impacts to public services, taxes, or utilities are predicted if the approval of the management plan is postponed.

5.6 Aesthetics/Recreation

Impact of Proposed Action: FWP does not predict any impacts on the aesthetic values found on WMAs. Authorized commercial activities are not expected to alter the existing natural environments found at each WMA. The proposed list of commercial uses that could be authorized at WMAs identifies types of commercial use that would enhance the public's appreciation of the individual ecosystem and the wildlife that use the site.

No Action Alternative: No recreational opportunities or aesthetic values would be altered at WMAs by the No Action alternative.

5.7 Cultural/Historic Resources

Impact of Proposed Action: FWP does not predict any impacts to cultural or historical resources. There are no authorized groundbreaking commercial activities identified in the Commercial Use Management Plan.

No Action Alternative: No recreational opportunities or aesthetic values would be altered at WMAs by the No Action alternative.

6. NARRATIVE EVALUATION & FINDING OF SIGNIFICANCE

The FWP proposal to adopt and implement a statewide commercial use management plan would ensure that each of the seven FWP regions execute a consistent process evaluating requests to conduct commercial use on wildlife management areas (WMA). In implementing the management plan, FWP staff would clearly understand the types of commercial use that could be authorized, the permit stipulations, and how the permits would be allocated and administered.

This administrative proposal initiating the Commercial Use Management Plan would give FWP the ability to better meet the increasing requests of businesses to use WMAs in their commercial enterprises. Although the pressure on WMAs by commercial interests has not occurred at the level found at FWP fishing access sites, FWP believes this proactive approach to commercial use at WMAs is appropriate and necessary.

The proposed action should have no negative cumulative effects on either the physical or human environment. However, if looked at on a larger scale, there is the possibility that the execution of a permit program for commercial uses at WMAs could have a number of limited influences on vegetation, wildlife, and local business opportunities. The extent of those influences is uncertain over the long-term, but regional FWP staff would monitor the commercial uses and make changes to the permit stipulations to ensure the WMA is able remain true to its intended purposes.

FWP concludes that none of the impacts associated with these alternatives would have a significant impact on the physical environment or human population in the area. This environmental assessment is therefore the appropriate level of analysis for the proposed action and an environmental impact statement is not required.

7. PUBLIC INVOLVEMENT

The department will provide 21-days for the public to review and comment on the proposed management plan and EA. In addition to these public involvement opportunities, FWP conducted extensive public involvement when developing the FWP Commercial Use Rules in 2006, including public hearings in each administrative region.

The public will be invited to comment on the proposed plan and EA via the following venues:

- Two public notices in the following newspapers: *Helena Independent Record, Daily Inter Lake, Missoulian, Billings Gazette, Bozeman Chronicle, Butte Standard, Great Falls Tribune, and Miles City Star*
- One statewide press release;
- Public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov>.

Copies of this environmental assessment will be distributed to interested parties and those expressing previous interest in this issue.

Offices contacted or contributing to this document:

Montana Fish, Wildlife & Parks: Wildlife Division, Regional Wildlife Managers, and
 Legal Bureau
 Montana Natural Heritage Program

8. EA PREPARERS

Steve Knapp	FWP Wildlife Habitat Bureau Chief
Charlie Sperry	FWP Recreation Management Specialist
Rebecca Cooper	FWP MEPA Coordinator
Becky Jakes-Dockter	FWP Attorney

APPENDICES

A –List of FWP Wildlife Management Areas

B – Draft Commercial Use Management Plan with FWP Commercial Use Rules Included

APPENDIX A

FWP Wildlife Management Areas Affected by Commercial Use Rules

	WMA Name	County	Acres	T & R
FWP Region 1	Buffalo Head Park	Flathead	4	T28N, R21W
	Bull River	Sanders	1330	T28N, R33W
	Flathead Lake	Flathead & Lake	137	T25N, R19W T25N, R20W
	Flathead River	Flathead	216	T28N, R20W T28N, R21W
	Horseshoe Lake	Lincoln	0.2	T26N, R19W
	Kootenai Falls	Lincoln	172	T31N, R32W
	Kootenai West	Lincoln	960	T37N, R26W T25N, R28W
	Kootenai – Woods Ranch	Glacier	1417	T37N, R26W
	Lower Stillwater Lake	Flathead	2	T32N, R23W
	Mount Silcox	Sanders	1552	T21N, R29W
	Ninepipe	Lake	3880	T19N, R20W T20N, R20W
	Pablo	Lake	416	T22N, R20W
	Ray Kuhns	Flathead	1530	T29N, R22W
	Roundhorn	Sanders	27	T30N, R22W
	Swan Lake	Lake	2	T26N, R19W
FWP Region 2	Aunt Molly	Powell	1184	T13N, R11W
	Blackfoot-Clearwater	Missoula & Powell	43761	T14N, R14W T15N, R11W T16N, R14W T14N, R13W T15N, R14W T15N, R13W
	Blue Eyed Nelly	Deer Lodge	164	T05N, R12W
	Calf Creek	Ravalli	2333	T06N, R19W
	Garrity Mountain	Deer Lodge	9475	T04N, R12W
	Lost Creek	Deer Lodge	1403	T05N, R11W
	Mount Jumbo	Missoula	120	T13N, R19W
	Nevada Lake	Powell	740	T12N, R10W
	Threemile	Ravalli	6089	T10N, R18W T09N, R18W
	Warm Springs	Deer Lodge	1563	T05N, R09W
FWP Region 3	Canyon Creek	Lewis & Clark	2210	T13N, R07W
	Canyon Ferry	Broadwater	5129	T07N, R01W
	Dome Mountain	Park	4789	T06N, R07W T07N, R07W
	Fleecer Mountain	Silver Bow	7394	T01N, R09W T01S, R09W T01N, R10W T01S, R10W

				T03N, R9W
	Gallatin	Gallatin	8611	T08S, R05E T07S, R04E T08S, R04E T08S, R03E
	Gravelly-Blacktail	Beaverhead	17781	T11S, R05W T11S, R06W
	Lake Helena	Lewis & Clark	157	T11N, R03W
	Madison-Bear Creek	Madison	3458	T08S, R02E T07S, R01E T08S, R01E
	Madison-Wall Creek	Madison	7067	T09S, R01W
	Mount Haggin	Deer Lodge & Silver Bow	58188	T02N, R11W T04N, R10W T03N, R11W T03N, R10W T03N, R09W
	Robb-Ledford	Beaverhead	28097	T09S, R04W T11S, R05W T09S, R05W
	Silver Gate	Park	3	T09S, R14E
FWP Region 4	Beartooth	Lewis & Clark	31947	T13N, R01W T14N, R01W T13N, R03W
	Beckman	Fergus	6568	T19N, R13E T18N, R15E T18N, R16E T19N, R16E
	Blackleaf	Teton	10397	T25N, R08W T26N, R08W
	Ear Mountain	Teton	3047	T24N, R08W
	Freezeout Lake	Teton	11466	T22N, R03W T23N, R04W T23N, R03W T22N, R04W
	Judith River	Judith Basin	9408	T13N, R11E
	Smith River	Meagher	3312	T11N, R04E T11N, R05E
	Sun River	Lewis & Clark	19771	T21N, R08W
FWP Region 5	Big Lake	Stillwater	1964	T02N, R21E T01N, R21E
	Grant Marsh	Big Horn	99	T01N, R33E
	Haymaker	Wheatland	1321	T09N, R12E T10N, R12E
	Silver Run	Carbon	638	T08S, R20E
FWP Region 6	Bowdoin	Phillips	156	T30N, R32E
	Fresno Reservoir	Hill	2677	T34N, R12E
	Fresno Tailwater	Hill	125	T33N, R14E
	Hinsdale	Valley	255	T31N, R35E
	Milk River - Dodson Creek	Phillips	39	T30N, R27E

	Milk River - Dodson Dam	Phillips	735	T30N, R26E
	Milk River – Sleeping Buffalo	Phillips	1310	T32N, R33E
	Rookery	Hill	2277	T33N, R15E T33N, R14E
	Vandalia	Valley	310	T30N, R36E
FWP Region 7	Amelia Island	Treasure	239	T07N, R36E
	Badlands	Prairie	2	T12N, R51E
	Elk Island	Richland	948	T20N, R58E
	F Island	Richland	119	T22N, R59E
	Fox Lake	Richland	1546	T22N, R55E
	Howard Valley	Rosebud	0.2	T06N, R39E
	Isaac Homestead	Treasure	1169	T06N, R35E
	Sanders	Treasure	0.2	T06N, R37E
	Seven Sisters	Richland	560	T21N, R58E
	Three Mile	Dawson	8	T17N, R55E
	War Dance Island	Dawson	12	T18N, R57E

APPENDIX B



DRAFT

**COMMERCIAL USE MANAGEMENT PLAN
FOR WILDLIFE MANAGEMENT AREAS**

June 2008

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CHAPTER ONE: BACKGROUND AND TYPES OF COMMERCIAL USE

1.1. Background

In 2006, the Montana Fish, Wildlife & Parks (FWP) Commission adopted administrative rules governing commercial use that occurs on land under the administration, jurisdiction and management of FWP. After extensive public comment and internal analysis, the Commission decided that FWP may authorize commercial use at a Wildlife Management Areas (WMA) but only after developing a commercial use plan for the WMA. The Commission recognized that WMAs are unique areas with a special focus on the wildlife resources. The Commission wanted to make sure that criteria were in place to ensure that any commercial use authorized at a WMA is consistent with the management objectives of the site and the public's use of the site.

“Commercial use means any person or entity that utilizes FWP land for consideration. This includes any person, group or organization that makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on FWP land. This includes nonprofit organizations and educational groups that receive money from participants in activities occurring on department land. This includes a person whose business operates on department land, regardless of that person's physical presence at the site, but does not include a person who rents, sells, or otherwise provides equipment or merchandise that is used on department land unless the renting, selling, or providing of equipment or merchandise takes place on department land. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination thereof.”

With this in mind, FWP is developing an overarching Commercial Use Plan (hereafter referred to as “plan”) for commercial use at WMAs. Rather than developing an individual plan for each WMA, FWP determined that it would be more efficient and beneficial to develop an overarching plan. This approach is intended to produce a consistent evaluation and decision-making process that can be used by the various administrative regions within FWP. Amendments to, or variations from this plan must be pre-approved by the FWP Wildlife Division administrator, in concurrence with the FWP director.

As defined in the Commercial Use administrative rules (Appendix A: ARM 12.14.101-170), a Restricted Use Permit (permit) is required to conduct commercial use at a WMA. . The remainder of this Plan will identify the types of commercial use that may be authorized at a WMA and the process for issuing and administering the restricted use permits.

1.2. Authorized Commercial Activities

WMAs are unique areas with a special focus on the wildlife resources. The plan identifies types (categories) of commercial use that may enhance the public's knowledge of and appreciation for the wildlife and other resources encountered at WMAs, and/or types of commercial use that are compatible with the public's enjoyment of a WMA (see list below). Staff may authorize these types of commercial use without requiring additional environmental analysis. The list provides guidance to staff responsible for issuing and administering permits. The decision to issue a permit for these types of commercial use at a specific WMA would be made at the regional level

and in some cases (based on site-specific resource conditions or management objectives) staff may decide not to authorize a request to conduct a type of commercial use that appears on the list.

The categories of commercial use that may be authorized at a WMA without additional environmental analysis are as follows:

- Walks/Hiking Tours
- Trail Rides (horses/ bicycles)
- Trail Rides (ATV's/Trail Bikes)
- Eco-Tours (Vehicle based tour groups using vans and buses for viewing animals and scenery)
- Still Photography or Filming – One-person Crew
- Commercial Hunting Dog Training.

Unless explicitly prohibited in the commercial use permit stipulations, commercial activities that are not noted above may be considered on a case-by-case basis. This includes still photography and filming when two or more people are involved. Interested parties should submit an application to the FWP regional office that oversees the site where the use would occur. FWP may require additional environmental analysis when considering a request to conduct commercial use of a type that is not listed above. At least 90-days advance notice is required. FWP may assess the applicant an additional fee to cover the cost of conducting the environmental analysis. A novel commercial activity proposed at a WMA will likely require a separate environmental assessment before FWP will authorize or deny a permit application.

CHAPTER TWO: PERMIT STIPULATIONS AND ADMINISTRATION

2.1 Permit Stipulations

The following permit stipulations apply to all permits authorizing commercial use at a WMA. Other stipulations may be added as necessary for a specific WMA in order for the permit to meet individual management goals of a given WMA.

The standard permit stipulations are as follows:

1. Permittee must comply with all FWP rules and regulations.
2. The permittee shall ensure that all persons operating under the authorization have obtained all required Federal, State, and local licenses or permits. The permittee is responsible for ensuring that all agents of the permittee comply with the terms of the permit. The permittee shall make every reasonable effort to ensure compliance with these requirements by all clients, customers, participants, or spectators under the permittee's supervision.
3. This Restricted Use Permit is not a property right and no value shall be assigned to or claimed for the permit, or for the occupancy or use of federal and state lands or related waters granted thereupon. The permit privileges are not to be considered property on which the permittee shall be entitled to earn or receive any return, income, price or compensation. The use of a permit as collateral is not recognized by FWP. The permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of a permitted business, the permittee shall notify the new owner that they are required to obtain a new permit.
4. All advertising and representations made to the public and the authorized officer must be accurate. Although the addresses and telephone numbers of the FWP may be included in advertising materials, official agency symbols may not be used. The permittee shall not use advertising that attempts to portray or represent the activities as being conducted by FWP. The permittee may not portray or represent the permit fee as a special State tax charged to the user. The permittee must furnish the authorized officer with any current brochure and price list if requested by the authorized officer.
5. The permittee will provide for the safety and well being of the public participating in the activity. This includes having adequate first aid and safety equipment on hand while performing the permitted activities.
6. In the event of default on any mortgage or other indebtedness, such as bankruptcy, creditors shall not succeed to the operating rights or privileges of the permittee.
7. The permittee must have a copy of the permit on their person or readily available for inspection by FWP staff.
8. The authorized officer, or other duly authorized representative of FWP, may examine any of the records or other documents related to the permit, the permittee or the permittee's operator, employee, or agent for up to 3 years after the expiration of the permit.
9. The permittee must notify the nearest FWP regional office within 24 hours of any observed hazards, safety problems, accidents or incidents.
10. FWP may require the permittee to possess and maintain a liability policy that names the State of Montana – FWP as additionally insured and provide FWP a copy of the Policy or

Insurance Certificate prior to final approval of this permit. The minimum limits of liability insurance shall be determined based on the assessed risk of the activity determined by regional staff and guidelines provided by the Risk Management and Tort Defense division of the Montana Department of Administration.

11. The permittee and Independent Contractors providing services authorized by this permit must comply with State of Montana Worker's Compensation laws. This can be accomplished through purchasing a Worker's Compensation insurance policy, having an exemption under the law, or obtaining an Independent Contractor Exemption Certificate. Contact the Montana Dept. of Labor and Industry for specific details at 406-444-2840.
12. FWP reserves the right to put a permittee on probation; suspend or revoke a permit; refuse to issue a permit for subsequent years; and/or issue a Notice to Appear citation for reasons such as, but not limited to the following: Violation of FWP Commission and administrative rules, regulations or policies and/or failure to comply with terms, conditions, or stipulations of this permit.
13. Commercial use must not unduly conflict with existing use.
14. Commercial use is generally prohibited Friday through Monday or other high use times that may be indicated on the permit. Staff may authorize commercial use Friday through Monday on a case-by-case basis in writing if the commercial use does not unduly conflict with the public's use during this time period.
15. Foot travel, horses and non-motorized wheeled vehicles are generally restricted to established roads and trails. Staff may authorize foot, horse, or non-motorized wheeled vehicle travel off established roads and trails on a case-by-case basis in writing for certain activities, such as game retrieval.
16. Motorized wheeled vehicles are restricted to established roads.
17. Commercial use is prohibited on the Beartooth WMA due to deed restriction.
18. All commercial hunting and fishing activities are prohibited.
19. All vending services, e.g., hot dog stands or equipment rentals, are prohibited.
20. Overnight camping is prohibited.
21. Commercial use is prohibited during hunting seasons, except when Regional Office determines a specific need, such as game retrieval during a late season hunt.
22. Professional hunting dog training may occur only from September 1 to January 1 of each calendar year.
23. Commercial use is prohibited during closed periods or in closed areas.
24. Commercial use on a WMA is limited to one authorized activity per day. This does not apply to still photography and filming if it is a one-person crew. Staff may authorize more than one commercial use activity per day on a case-by-case basis in writing if the commercial use does not unduly conflict with the public's use.
25. Commercial users must maintain and have on their person, for department inspection, a logbook for recording commercial use (ARM 12.14.120.6).
26. Each WMA may have special stipulations based on the management objectives at that site; and
27. FWP reserves the right to alter the terms, conditions, or stipulations of a permit at any time for reasons such as significant policy changes, administrative procedure changes, stipulation changes, impacts to resource values, and user conflicts.

2.2 Volume of Commercial Use at WMAs

WMAs are unique areas with a special focus on the wildlife resources. It is therefore important to carefully manage commercial use in a way that is consistent with the management objectives of the site. This includes managing the overall volume of commercial use that is approved at a WMA; the volume of a particular type of commercial use at a WMA; and the volume of commercial use that may be conducted by an individual permit holder at a WMA.

Overall Volume of Commercial Use

Commercial use is limited to one authorized activity per day per WMA. This does not apply to still photography and filming if it is a one-person crew. Staff may authorize more than one commercial use activity per day on a case-by-case basis in writing if the commercial use does not unduly conflict with the public's use.

Volume of Commercial Use Conducted by Permit Holder

Due to the different types of commercial use that may be authorized, this plan does not specify the maximum amount (volume) of commercial use that the permit holder may conduct. Staff shall establish this amount in the terms of the permit. As a general rule, this amount is based on the maximum number of people allowed per activity per day.

2.3 Permit Allocation Methods

With the exceptions of permits authorizing a one-person crew to conduct still photography or filming, the availability of permits to conduct commercial use at a WMA is limited. It is therefore necessary to identify the mechanism that will be used to allocate the permits.

All applications that meet the permit stipulations and the site-specific management objectives of the WMA would be sorted according to the category of commercial use they fall under. If the number of applications exceeds the number of permits that are available, FWP will randomly select applications by lottery from the pool of applications for each category. The process will be repeated each year and the issuance of a permit one year does not have any bearing on whether that person receives a permit the following year.

2.4 Application Process (Excluding Still Photography or Filming)

Per the Commercial Use administrative rules (ARM 12.14.145), the application process for restricted use permit and clarified by this management plan abides by the following steps:

1. Restricted use permits for a WMA are administered by the FWP Regional Office in which the WMA is located (see Appendix B for sample permit application and Appendix C for Regional Office addresses).
2. For 2008 only, applications may be submitted throughout the calendar year. Starting in 2009, applications must be submitted between January 1 and February 15. Applications that meet

the minimum requirements will be evaluated. FWP will notify successful applicants no later than March 1 unless additional environmental analysis is required. FWP may consider applications received after February 15 on a case-by-case basis if permits are still available for the proposed activity. **Applications received after February 15 must be submitted at least 90-days before the commercial use is intended to occur.**

3. Applications are available at most FWP Regional Offices. Applications for commercial use occurring within FWP administrative region 4 are available at the following address: Attn: WMA Restricted Use Permits P.O. Box 488, Fairfield MT 59436.
4. Payment of permit fees must be made at time of receipt of Restricted Use Permit.

2.5 Application Process: Still Photography and Filming – One-person Crew

FWP may issue a statewide permit authorizing a one-person crew to conduct still photography of filming at all FWP sites (WMAs, State Parks, and Fishing Access Sites). This permit is only available to a one-person crew (see definition below). The statewide permit may be obtained at any FWP regional office.

A “crew member” means a photographer, cinematographer, model, or any supporting member of a commercial photography or filming activity.\

2.6 Permit Fee Schedule

A fee is required to conduct commercial use on WMAs. Applicants may be required to pay the permit fees at the time of receipt of Restricted Use Permit. FWP may waive the commercial use fees on a case-by-case basis for educational groups when the following conditions are met:

- a) the group is from a bona fide institution that meets the definition of an educational group (see commercial use rules definitions);
- b) the group provides a written explanation of the educational purpose of the visit; and
- c) the use is not primarily for recreational purposes.

FWP may waive or adjust the commercial use fees on a case-by-case basis when the proceeds from the use or event are donated to the maintenance, management, or the improvement or development of facilities, at the site where the use occurs.

FWP may waive or adjust commercial use fees when a service provider donates their services for a charitable cause and is not compensated for the service.

FWP may charge a processing fee for recovery of costs associated with preparing an environmental analysis document when processing a permit application.

The commercial use permit fee schedule for WMAs is as follows:

Primary Type of Use:	Restricted Use Permit Fee:
Guided Tour or Trip	A) 3% of unadjusted income; or B) \$2 - \$10 per client day.
Special Events	A) \$10 - \$50 per day; or B) \$2 - \$10 per participant.
Still Photography and Filming	1 person crew: \$25 per day or \$50 per year; 2 to 5 person crew: \$50 per day; 6 to 20 person crew: \$100 per day; 21 – 35 person crew: \$200 per day; 36 – 50 person crew: \$300 per day; 51 or more person crew: \$400 per day.
Non-service Use and Consumptive Commercial Use	\$10 - \$300 per day.

2.7 Permit Decisions and Penalties

The regional supervisor, in concurrence with the Wildlife Division administrator, shall be responsible for restricted use permitting decisions. A person who has been denied a restricted permit or a person whose commercial use permit has been suspended or cancelled may appeal the permitting decision in writing to the director within 30 days of the date of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

Per the Commercial Use administrative rules (ARM 12.14.145), permits can be revoked, amended, or suspended by FWP for the following reasons:

1. failure to comply with commercial use rules;
2. failure to pay required permit fees;
3. falsification of records of use;
4. failure to comply with terms of the permit;
5. failure to comply with state or federal rules or laws pertaining to resources and land management;
6. failure to obtain other state or federal permits;
7. impacts on resources or the public; and
8. changing conditions or management objectives at the site.

In addition to suspending or revoking a permit, FWP may issue a citation for violating a commercial use rule.

APPENDIX A: FWP COMMERCIAL USE RULES

Adopted December 14, 2006

ARM 12.14.101 DEFINITIONS (1) “Allocation” means distributing limited use opportunities when a rationing system is in place.

(2) “Authorization” means written permission granted to a person or entity by the department to conduct commercial use.

(3) “Commercial use” means any person or entity that utilizes lands under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration. Commercial use includes any person, group or organization, that makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on land that is under the control, administration, and jurisdiction of the department. This includes nonprofit organizations and educational groups that receive money from participants in activities occurring on department land. This includes a person whose business operates on department land, regardless of that person’s physical presence at the site, but does not include a person who rents, sells, or otherwise provides equipment or merchandise that is used on department land unless the renting, selling, or providing of equipment or merchandise takes place on department land. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination thereof.

(4) “Commission” means the Department of Fish, Wildlife and Parks Commission of the state of Montana.

(5) “Concession service” means a commercial business that provides multiple services or products on department land. Examples include but are not limited to marinas, lodging, equipment rental or sales, retail sales, and food services.

(6) “Consideration” means something of value given or done in exchange for something of value given or done by another.

(7) “Department” means the Department of Fish, Wildlife and Parks of the state of Montana.

(8) “Educational group” means an organized group that is officially recognized as an educational or scientific institution by a federal, state, or local government entity. Documentation of this recognition must be on institutional letterhead and include a signature by the head of the institution/department and documentation of official educational or scientific tax exemption as granted by the Internal Revenue Service.

(9) “Fishing access site” means a site or area designated by the department as a fishing access site.

(10) “Mitigation” means an enforceable measure, within the authority of the agency or mutually agreed to by the permit holder that is designed to reduce or prevent undesirable effects or impacts of the proposed use.

(11) “Ration” means to regulate use intensity by limiting the amount of use on a site.

(12) “Restricted water body” means a body of water regulated by special department rules governing commercial use, such as rules that restrict the timing, location, amount, or type of commercial use that occurs. “Restricted water body” may also mean a body of water that is under a cooperative management agreement with another agency concerning commercial use.

(13) “Site” means an individual unit of land, or portion thereof, owned or managed by the department.

(14) “State park” means a site or area designated by the department as a state park.

(15) “Water-based outfitter or guide” means any person who for consideration provides water-related recreation services or supervises someone providing these services. This includes outfitters and guides that are licensed by the state of Montana, and water-based service providers that are not licensed by the state of Montana.

(16) “Wildlife management area” means a site or area designated by the department as a wildlife management area or a wildlife habitat protection area.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.105 APPLICABILITY OF COMMERCIAL USE RULES (1) The following rules shall govern commercial use, as defined in ARM 12.14.101, that occurs on lands under the control, administration, and jurisdiction of the department. Unless otherwise noted in these rules, these rules apply to fishing access sites, state parks, wildlife management areas, administrative sites, and other lands under the control, administration, and jurisdiction of the department.

(2) The department may apply these rules to leased lands when the department has authorization to manage use of these lands. This does not include block management lands or lands under a conservation easement.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.110 EXCEPTIONS TO APPLICABILITY OF COMMERCIAL USE RULES (1) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of manipulating, enhancing, or otherwise improving the habitat of a site. Such uses shall continue to be governed by the department’s land lease-out policy. Examples include but are not limited to livestock grazing, farming, haying, fencing, and timber harvest.

(2) These commercial use rules do not apply to the leasing of department land for communication towers, utility easements, and granting of right-of-way. These types of commercial use shall continue to be governed by the department’s land lease-out policy.

(3) These commercial use rules do not apply to the leasing of department oil and gas reserves. These uses shall continue to be governed by the department’s oil and gas reserves leasing policy.

(4) These commercial use rules do not apply to the transferring of vehicles or people to or from a department site.

(5) These commercial use rules do not apply to the collection of antlers.

(6) These commercial use rules do not apply to trapping or commercial activities under Title 87, chapter 4, parts 2 through 10, MCA (taxidermists, fur dealers, alternative livestock, shooting preserves, fish ponds, sale of game, menageries and zoos, game bird farms, and fur farms), except commercial dog training and field trials conducted for commercial purposes.

(7) These commercial use rules do not apply to the press or the news media when photographing, filming, or reporting on activities that occur on department land.

(8) These commercial use rules do not apply to consignment sales when the department sells merchandise on behalf of a business and a portion of the revenue is allocated to the department.

(9) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of addressing public safety concerns. Examples include but are not limited to hazardous tree removal and fuel reduction efforts to reduce fire danger.

(10) These commercial use rules do not apply to fishing tournaments conducted by nonprofit organizations.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.115 GENERAL POLICY (1) Department land belongs to the people of Montana and the department manages these sites and associated resources in trust for the benefit of current and future generations of the people. The department's primary responsibilities are to maintain or enhance the resources of these sites and to provide benefits to the public from these sites.

(2) Some types of commercial use can help the department to achieve its resource management goals and/or provide desired services to the public when properly managed. Commercial use must be managed to prevent or minimize conflicts with the public and the intended purposes of a site.

(3) Commercial use on department lands is a privilege, not a right. Authorization to conduct commercial use may be denied, amended, or revoked at any time for cause. Historical commercial use of a site does not convey a right to conduct commercial use in the future. If it becomes necessary to ration and allocate commercial use, the department is not required to allocate opportunities based on historical use of a site.

(4) The department may prohibit, restrict, condition, or otherwise manage commercial use, including placing stipulations on the type, timing, location, duration, and quantity of commercial use. Reasons for prohibiting, restricting, conditioning, or otherwise managing commercial use include but are not limited to:

- (a) protecting resources or mitigating impacts to resources;
- (b) preventing or minimizing conflicts with the intended purpose for which the department acquired, maintains, or manages a site;
- (c) preserving the public's ability to recreate on or otherwise use a site;
- (d) providing for the public's safety and welfare; or
- (e) other purposes identified by the department.

(5) Restrictions, including prohibitions, rationing, and allocation on water-based outfitters and guides on rivers and fishing access sites shall be governed by the department's statewide river recreation rules.

(6) The purpose and management objectives can vary from one type of department land to another and from one site to another. The public's use and expectations can vary from one type of department land to another and from one site to another. The opportunities to conduct commercial use may be different depending upon where the use would occur, and the department may develop policies that provide additional guidance for managing commercial use at fishing access sites, state parks, wildlife management areas, and other department lands.

(7) The department may establish special criteria for a particular site or prohibit commercial use altogether based on the management objectives and conditions of that site.

(8) The department may prohibit or condition commercial use that would displace the general public. The department may temporarily alter public use opportunities at fishing access

sites and state parks to accommodate commercial use on a case-by-case basis in the interest of public safety and security or when there is the potential for short-term conflicts.

(9) The department must comply with federal aid requirements when authorizing commercial use on department land purchased or managed with federal aid.

(10) Commercial hunting outfitting is prohibited on all department land and on water bodies that are located entirely within the boundaries of department land. Commercial fishing outfitting is prohibited on all wildlife management areas. The department may authorize commercial use that is solely for the purpose of assisting the public in the retrieval of legally harvested game animals. The department may authorize a commercial hunting outfitter to:

(a) travel on a designated trail across department land solely for the purpose of gaining access to federal lands where the commercial hunting outfitter is authorized to conduct use; and

(b) use a fishing access site solely for the purpose of gaining access to water bodies where the commercial hunting outfitter is authorized to conduct use.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.120 COMMERCIAL USE PERMITS (1) A permit is required in advance to conduct commercial use on lands under the control, administration, and jurisdiction of the department.

(2) The department administers two types of commercial use permits:

(a) fishing access site permit; and

(b) restricted use permit.

(3) The department may issue a commercial use permit to a person as an individual, or as a representative of an entity or business. When authorizing water-based fishing outfitting or guiding, the department may only issue the permit to a licensed outfitter or guide. The applicant must obtain all other licenses or permits required by state or federal law in order to receive a commercial use permit.

(4) A commercial use permit is not a property right and may be revoked, amended, or suspended at any time for cause. Causes for revoking, amending, or suspending a permit include but are not limited to the following:

(a) failure to comply with the commercial use rules;

(b) failure to pay required permit fees;

(c) falsifying records of use;

(d) failure to comply with the terms of the permit;

(e) failure to comply with state or federal rules or laws pertaining to resource and land management;

(f) failure to obtain other required state or federal permits;

(g) impacts on resources or the public; or

(h) changing conditions or management objectives at a site.

(5) The availability, terms, and conditions of a commercial use permit may vary based on the regulations and management plan in place at the site where the use would occur. The department may refuse applications for a permit if the use would occur at a site where commercial use is rationed and there are no additional opportunities to conduct such use.

(6) The department may require commercial users to report their use of department land. The department may require commercial users to maintain and have on their person for

department inspection a logbook for recording commercial use. The department shall include specific reporting requirements as permit or contract stipulations.

(7) A commercial use permit may only be used by the holder of the permit. The permit holder may not sell, lease, or rent the permit, or otherwise receive compensation from another person for the opportunity to use the permit. The permit holder may hire or contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, collect fees from clients, or advertise any business other than the permitted business when conducting the permitted use. The permit holder is responsible for ensuring that the persons hired or contracted comply with the terms of the permit.

(8) The permit holder may pay an agent to recruit clients, make arrangements with clients concerning monetary consideration or services provided, and collect fees from clients provided that the agent does not conduct the authorized services.

(9) A commercial use permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of a permitted business, the person selling the business shall notify the new owner that the new owner is required to obtain a new commercial use permit pursuant to this subchapter.

(10) If the recipient of a commercial use permit sells or transfers in entirety the part of his/her business that is operated under that commercial use permit, the department shall issue a new commercial use permit to the new owner so long as the seller has remitted all fees due to the department and so long as the buyer has obtained all other licenses or permits required by state or federal law and agrees to the terms of the permit. The new permit shall have the same expiration date as the seller's permit. The new permit shall have the same expiration date as the seller's permit.

(11) If the recipient of a commercial use permit sells or transfers in entirety the part of their business that operated under that commercial use permit, any rationed units of use that were previously allocated to the seller shall be reallocated to the new owner of that business. Upon the sale or transfer of a permitted business, the person selling or transferring the business shall notify the new owner that the use of rationed units of use is subject to change pursuant to rules adopted by the commission and that no property right attaches to the rationed units of use.

(12) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days or other allocated units of use, temporarily or permanently except that Smith River outfitters may lease, rent or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.125 FISHING ACCESS SITE PERMIT (1) A fishing access site permit is required to conduct water-based outfitting at fishing access sites and other department land that provide access to a non-restricted water body.

(2) A fishing access site permit is required to conduct water-based guiding at fishing access sites and other department land that provides access to water bodies.

(3) A fishing access site permit authorizes a water-based outfitter to conduct water-based outfitting at any fishing access site or other department land in the state that provide-access to a

non-restricted water body unless the department specifies that a restricted use permit is required for the site. A water-based outfitter must obtain a restricted use permit to conduct water-based outfitting at a fishing access site or other department land that provides access to a restricted water body.

(4) A fishing access site permit authorizes a water-based guide, operating under the authority of a water-based outfitter, to conduct water-based guiding at any fishing access site or other department land for which the outfitter is authorized to conduct use.

(5) A fishing access site permit is an annual permit that is valid for the license year in which the permit is issued.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.130 FISHING ACCESS SITE PERMIT: APPLICATION PROCESS (1) A fishing access site permit may be obtained at a department regional office or through the department's internet licensing system so long as the applicant provides the required application information and remits the required permit fee.

(2) The department may require the following when applying for a fishing access site permit:

- (a) a completed permit application form;
- (b) an outfitter or guide license number if providing angling services;
- (c) an automated license system number;
- (d) permit fee; and
- (e) proof of insurance that the department judges sufficient to protect the public and the state of Montana.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.135 FISHING ACCESS SITE PERMITTING DECISIONS (1) There shall be no limit on the number of fishing access site permits issued.

(2) The regional supervisor may deny or revoke a fishing access site permit for failure to comply with the terms of the permit, violating department rules and regulations, or other infractions identified by the department. If a non-restricted water body is reclassified as a restricted water body, a fishing access site permit is no longer valid at the sites that provide access to the restricted water body. The fishing access site permit holder may apply for a restricted use permit to use these sites.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.140 RESTRICTED USE PERMIT (1) A restricted use permit is required for the following:

- (a) water-based outfitting at a fishing access site or other department land that provides access to a restricted water body; and
- (b) all other types of commercial use at a fishing access site, state park, wildlife management area, or department administrative site.

(2) A restricted use permit authorizes the recipient of the permit to conduct commercial use of the type, and at the locations, designated on the permit.

(3) A restricted use permit is valid for the time period specified on the permit, not to exceed five years. The department may modify the terms and conditions of the permit at any time. The permit holder may also request changes to a multi-year permit through submission of an updated plan of operation or other material.

(4) The department may place stipulations on the restricted use permit, including but not limited to the type, timing, location, duration, and volume of the use. The department's statewide river recreation rules shall govern the development of stipulations for water-based outfitters and guides on rivers and fishing access sites.

(5) The department may authorize the recipient of a restricted use permit to conduct use at more than one location.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.145 RESTRICTED USE PERMIT: APPLICATION PROCESS (1) A restricted use permit application must be submitted to the regional office that oversees the site or sites where the use would occur. If use is proposed for sites located in more than one department administrative region, the application may be submitted to one of the regional offices and the department may issue a single permit to authorize the use.

(2) The completed application should be submitted at least 45 days before the use is intended to begin or at least ten days before a special event, filming activity, or incidental commercial use lasting less than five days. The time period required to process applications begins when the applicant has submitted all of the required information. The department may process completed applications received after these time periods on a case-by-case basis. The department may require additional time to process an application if the department determines that an environmental analysis is required.

(3) The department may require the following when applying for a restricted use permit:

- (a) a completed restricted use permit application;
- (b) an outfitter or guide license number if providing angling services;
- (c) an automated license system number;
- (d) permit fee;
- (e) deposit or damage security bond;
- (f) proof of insurance that the department judges sufficient to protect the public and the state of Montana;
- (g) proof of workers' compensation and/or an independent contractor exemption certificate;
- (h) information explaining how the proposed use would benefit the public's resources or the public's enjoyment of the site; and
- (i) other relevant information in sufficient detail to allow the department to evaluate the nature and impact of the proposed activity, including measures the applicant will use to prevent or mitigate adverse impacts.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.150 RESTRICTED USE PERMITTING DECISIONS (1) The department has discretion over whether to issue a restricted use permit. Permitting decisions are based on the following factors to the extent that they are relevant:

- (a) conformance with laws, rules, policies, management plans, and land use plans;
 - (b) contribution to the overall mission, goals, and objectives of the site;
 - (c) public safety;
 - (d) conflicts with other users in regard to type of use, timing, duration, location, site capacity, and other similar considerations;
 - (e) resource impacts and protection;
 - (f) extent to which the public interest is served;
 - (g) effects on adjacent lands;
 - (h) whether in the past the applicant complied with the terms of his/her permit or other authorization from the department and other agencies;
 - (i) whether the department has the fiscal and human resources to oversee the proposed use; and
 - (j) such other circumstances that the department finds appropriate.
- (2) The availability, terms, and conditions of a restricted use permit may vary based on the regulations and management plan in place at the site where the use would occur. Prior to issuing a permit to conduct commercial use at a wildlife management area, the department must prepare a commercial use plan for that site. The commercial use plan shall:
- (a) identify the types of commercial use that may be authorized at the site;
 - (b) establish the terms, conditions, and volume of commercial use that may be authorized; and
 - (c) establish the methods for allocating commercial use permits
- (3) The department's statewide river recreation rules shall govern permitting decisions that would ration, allocate, or otherwise restrict water-based outfitting and guiding opportunities on rivers and fishing access sites. This does not include permitting decisions when the applicant or permit holder has violated the terms of a permit or violated department rules or regulations.
- (4) Upon adoption of these rules, the department may continue to issue permits that were established prior to the adoption of these rules. The department shall administer these permits consistent with these commercial use rules.
- (5) For permit systems established prior to the adoption of these commercial use rules, when a restricted use permit expires, the department shall review the previously authorized commercial use and may issue a new restricted use permit to the permit holder upon application so long as the applicant complied with the terms of his/her permit or other authorization from the department and other agencies and so long as the applicant complied with the laws, rules, and policies of the department and other agencies. The department may adjust the terms and conditions of the new permit, including the allocated units of use.
- (6) For permit systems established after the adoption of these commercial use rules, the department may develop a permit renewal system under which the previous permit holder and other commercial users are eligible to apply for the new permit. The department's statewide river recreation rules shall govern the development of a permit renewal system for water-based outfitting and guiding on rivers and fishing access sites.
- (7) The regional supervisor, in concurrence with the appropriate division administrator, shall be responsible for restricted use permitting decisions.

(8) A person who has been denied a restricted use permit or a person whose commercial use permit has been suspended or cancelled may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

(9) The director or the director's designee shall issue a written decision on the appeal. The director's decision is final.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.155 CONCESSION CONTRACT (1) The department may develop a concession contract to authorize a commercial business on department land. The department shall waive the requirement to obtain a commercial use permit when the commercial use is authorized through a concession contract.

(2) The department shall honor the terms set forth in contracts established prior to the adoption of these rules. The department shall apply these rules when those contracts expire.

(3) When developing and administering concession contracts, the department shall follow the state purchasing and contracting guidelines.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.160 COMMERCIAL USE FEES (1) The department may require payment of fees for conducting commercial use on land owned or managed by the department. Permit fees pursuant to this rule shall be established through commission rulemaking. The department shall establish concession contract fees on a case-by-case basis. The commission may adjust permit fees as necessary to reflect changes in costs and the market and in situations where the department has an agreement or joint-permit system with other agencies.

(2) The department may waive commercial use fees on a case-by-case basis for educational groups when the following conditions are met:

(a) the group is from a bona fide institution that meets the definition of an educational group;

(b) the group provides a written explanation of the educational purpose of the visit; and

(c) the use is not primarily for recreational purposes.

(3) The department may waive or adjust commercial use fees on a case-by-case basis when the proceeds from the use or event are donated to the maintenance, management, or the improvement or development of facilities, at the site where the use occurs.

(4) The department may waive or adjust commercial use fees when a service provider donates their services for a charitable cause and is not compensated for the service.

(5) The department may charge a processing fee for recovery of costs associated with preparing an environmental analysis document when processing a permit application.

(6) Applicants must pay the required fees by the date specified in the terms of the permit.

(7) With approval from the legislature, the department shall use the permit fees from commercial use at fishing access sites to help support the fishing access site program, river recreation management, and enforcement.

AUTH: 2-4-102, 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 2-4-102, 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.165 RATIONING AND ALLOCATION OF COMMERCIAL USE (1) The department's statewide river recreation rules shall govern the rationing and allocation of commercial use on rivers, including fishing access sites that provide access to rivers.

(2) The regional supervisor, in concurrence with the appropriate division administrator, director, and the commission, may ration and allocate commercial use at a state park, wildlife management area, or department administrative site. The regional supervisor may consider the following when making rationing and allocation decisions:

- (a) laws, rules, policies, management plans, and land use plans for the site;
- (b) overall mission, goals, and objectives of the site;
- (c) input from the public;
- (d) public safety concerns;
- (e) biological conditions;
- (f) social conditions;
- (g) use conflicts;
- (h) past performance of commercial users;
- (i) public demand for commercial use; and
- (j) other factors as determined by the department.

(3) The regional supervisor shall describe what actions have already been taken by the department to address a particular problem or concern, why rationing is necessary, and how rationing of use would address a particular problem or concern.

(4) To the extent possible, the department must monitor and evaluate commercial use of a site to determine whether rationing is necessary and to assess whether rationing has improved conditions.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA


IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.170 COORDINATING WITH OTHER AGENCIES (1) The department may design a commercial use permit system for a site in coordination with another agency so long as the permit system complies with department rules and regulations and the permitted commercial use is consistent with department restrictions on commercial use.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MC

APPENDIX B

 <p>Montana Fish, Wildlife & Parks</p>	<h3>Restricted Use Permit Application for Commercial Use: Wildlife Management Areas</h3> <p style="color: red; font-size: small;">Authority: ARM 12.14.10 –12.14.170; ARM 12.8.211; 23-1-105(1) MCA; 87-1-301(1)(c) MCA; 43 U.S.C. 1201; 43 U.S.C. 1701; 16 U.S.C. 460 L-6(a), and 43 CFR Group 2930</p>	<div style="border: 1px solid black; padding: 5px; font-size: small;"> Application No. (Administrative Use Only) <div style="border-bottom: 1px solid black; height: 15px; width: 100%; margin-top: 5px;"></div> </div>												
<p>Instructions: Please complete and return this application and all required supplemental materials to Fish, Wildlife & Parks at least <u>45 days</u> before commercial use is intended to occur. It is a violation of FWP rules to conduct commercial use on a Wildlife Management Area (WMA) without a Restricted Use Permit. For further information call 406-467-3234 or 406-454-5840.</p>														
<p><u>Please Print or Type</u></p>														
<p>Name of Company or Organization: _____</p>														
<p>Name of Primary Contact (name that will appear on the permit): _____</p>														
<p>Applicants Automated License System No. (ALS), Business I.D.: _____</p>														
<p>Address: _____</p> <p>_____</p> <p>_____</p>	<p>Phone Number: () - _____</p> <p>Cell Phone: () - _____</p> <p>E-mail: _____</p>													
<p>Persons that are authorized to represent your business: (List the name, FWP ALS No. (if available) or and position of all employees, guides, part-time, and contracted help that are authorized to conduct commercial use associated with your permit.) <i>*Fish, Wildlife & Parks must be notified within 2 weeks of adding or removing a representative. Attach additional sheets if necessary.</i></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; width: 33%;">Name</th> <th style="text-align: center; width: 33%;">ALS or Business ID</th> <th style="text-align: center; width: 33%;">Position</th> </tr> </thead> <tbody> <tr> <td style="border-bottom: 1px solid black; height: 20px;"></td> <td style="border-bottom: 1px solid black; height: 20px;"></td> <td style="border-bottom: 1px solid black; height: 20px;"></td> </tr> <tr> <td style="border-bottom: 1px solid black; height: 20px;"></td> <td style="border-bottom: 1px solid black; height: 20px;"></td> <td style="border-bottom: 1px solid black; height: 20px;"></td> </tr> <tr> <td style="border-bottom: 1px solid black; height: 20px;"></td> <td style="border-bottom: 1px solid black; height: 20px;"></td> <td style="border-bottom: 1px solid black; height: 20px;"></td> </tr> </tbody> </table>			Name	ALS or Business ID	Position									
Name	ALS or Business ID	Position												
<p>Have you had a Fish, Wildlife & Parks permit denied, suspended or revoked? No <input type="checkbox"/> Yes <input type="checkbox"/></p> <p>If you answered yes to either of the questions above, please provide an explanation: _____</p> <p>_____</p>														
<p>Name of WMA(s) for requested use: _____</p> <p>Proposed activity to be conducted: _____</p>														
<p>All motorized and non-motorized equipment and/or persons operating under your permit must be in compliance with WMA use stipulations when conducting commercial use on the WMA. You will be responsible for all use associated with your permit.</p> <p>On the following page is some helpful information regarding your restricted use permit. Providing this information helps us to evaluate the proposed activity and its impacts on the WMA. Please read and/or fill out the appropriate information.</p>														

Still Photography & Filming

A restricted use permit for still photography and filming is valid for use regionwide and is the responsibility of the permit holder to review and follow guidelines for any wildlife management area to be used. Specific WMA information will be available from a designated commercial use coordinator in each administrative region. The permit holder must also decide whether or not their permit is to be valid for one or multiple days and be able to pay the fee, depending on the length (see permit fee table on the following page). Please describe any effects the proposed activity might have on (1) public safety, (2) natural resource impacts and (3) possible conflicts with other public users? Attach additional sheets if necessary.

1. _____
2. _____
3. _____

Guided Tours or Trips

(1) Please describe in detail the proposed nature of your request. What effect does the requested use have on (2) public safety, (3) natural resource impacts and (4) possible conflicts with other public users? It is recommended that prior to providing information, the applicant review the specific guidelines and restrictions of the WMA(s) intended for use. Attach additional sheets if necessary.

1. _____

2. _____
3. _____
4. _____

When is the time period of use that you are requesting? _____. If there is more than one request for the same time period within the allowed user dates, preference will be to the first application received. Applications may be submitted after the beginning of the license year, which begins March 1.

Other Commercial Use Activities

Commercial use means any person or entity that utilizes lands under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration.

(1) Please describe in detail the proposed nature of your request. What effect does the requested use have on (2) public safety, (3) natural resource impacts and (4) possible conflicts with other public users? It is recommended that prior to providing information, the applicant review the specific guidelines and restrictions of the WMA(s) intended for use. Attach additional sheets if necessary.

1. _____

2. _____
3. _____
4. _____

When is the time period of use that you are requesting? _____. If there is more than one request for the same time period within the allowed user dates, preference will be to the first application received. Applications may be submitted after the beginning of the license year, which begins March 1.

Permit Fees

The permit fee for commercial use on Wildlife Management Areas depends on the specific WMA commercial use restrictions and fee schedule. See below for fee schedule and view the commercial use restrictions sheet for specific WMA restrictions.

The restricted use permit fee must be paid in full upon acceptance for commercial use, and receipt of Restricted Use Permit. Failure to comply will void application request. A \$100.00 security deposit (separate payment) may be required depending on the proposed activity. Please follow these steps to calculate your restricted use permit fee:

Still Photography or Filming - 1 person crew	No Deposit	1 person crew: \$25 per day or \$50 per year 2-5 person crew: \$50 per day permit fee 6-20 person crew: \$100 per day permit fee 21-35 person crew: \$200 per day permit fee 36-50 person crew: \$300 per day permit fee 51 or more person crew: \$400 per day permit fee
Still Photography or Filming ≥ 1 person crew	\$100.00 Deposit	
Guided Trail Rides - Motorized	\$100.00 Deposit	\$10 per client per day permit fee
Guided Trail Rides/Walks - Non-Motorized	\$100.00 Deposit	\$10 per client per day permit fee
Guided Eco-tours	\$100.00 Deposit	\$10 per client per day (Certain educational groups as defined by FWP Commercial Use Rules may be eligible for reduced fees or fee exemptions.)

Please Submit the Following Material (Place an "X" in the box to indicate that the information is included with your application.)

☐ Completed application.

☐ Insurance certificate or Liability Policy that names *the State of Montana* as *additionally insured*.
(See Permit Stipulations for minimum coverage amounts.)

Mail completed and signed application and proof of insurance certificate to:
Montana Fish, Wildlife & Parks at appropriate office

Upon confirmation that you have submitted all of the required information and permit fees due at the appropriate time, the FWP Authorized Officer will sign the permit and mail you a copy.

***** APPLICANTS SIGNATURE IS REQUIRED BELOW *****

I acknowledge that I have read the R4 WMA permit stipulations, the specific WMA plan requested for use and the general R4 WMA regulations accompanying this application. I am required to comply with the latter stipulations and regulations and I am aware of the penalties for violations. I agree to comply with FWP rules and regulations and I understand that failure to comply may result in the probation, suspension or revocation of the permit. If approved for a restricted use permit, I agree to pay the appropriate fee(s) in full no later than 10 days after notification of authorization. I further understand that the provision of false information, or the failure to keep this application or other permit information updated, are grounds for probation, suspension or revocation of the permit.

Applicant's Signature: _____ Date: _____

(ADMINISTRATIVE USE ONLY)

Receipt of Application and Payment for:

Wildlife Management Area Restricted Use Permit

Date Received: _____ Company/Organization: _____
Security Deposit: \$ _____ Check #: _____
Permit Fee: \$ _____ Check #: _____ Total Fees Paid: \$ _____
Certificate of Insurance? ☐ Yes ☐ No Type & Expiration Date: _____
Approved? ☐ Yes ☐ No Justification (If not approved): _____
Authorized Official: _____ Date: _____

Deposit Refunded: ☐ Yes ☐ No Amount: \$ _____ In person or via mail: _____ Date: _____

Deposit Forfeited: ☐ Yes ☐ No Reason For Forfeiture: _____

Name of person advised: _____ Date: _____

Cut or Tear on Dashed Line



**RESTRICTED USE PERMIT FOR COMMERCIAL USE
ON WILDLIFE MANAGEMENT AREAS**

Application No.
(Administrative Use Only)

Name of Company or Organization: _____

Name of Primary Contact: _____

Authorized Activity: _____ on _____ WMA

Date of Use: _____ If still photography / Filming (circle one): Day Use Annual Use

Additional Instructions / conditions: _____

Signature of Department Personnel: _____ Date: _____

APPENDIX C

**REGION ONE: 490 N. Meridian Rd., Kalispell, MT 59901
Voice: 406-752-5501**

**REGION TWO: 3201 Spurgin Rd., Missoula, MT 59804
Voice: 406-542-5500**

**REGION THREE: 1400 South 19th Ave., Bozeman, MT 59718
Voice: 406-994-4042**

**REGION FOUR: 4600 Giant Springs Rd., Great Falls, MT 59405
Voice: 406-454-5840**

**Also: WMA Restricted Use Permits P.O. Box 488, Fairfield, MT 59436
Voice: 406-467-3234**

**REGION FIVE: 2300 Lake Elmo Dr., Billings, MT 59105
Voice: 406-247-2940**

**REGION SIX: 54078 US Highway 2 W, Glasgow, MT 59230
Voice: 406-228-3700**

**REGION SEVEN: Industrial Site West P.O. Box 1630, Miles City, MT 59301
Voice: 406-234-0900**